

342.7003

48 CFR Ch. 3 (10-1-05 Edition)

(d) The contracting officer is responsible for assuring that contractor performance and contract monitoring are carried out in conformance with contract provisions. If performance is not satisfactory or if problems are anticipated, it is essential that the contracting officer take immediate action to protect the Government's rights under the contract. The contracting officer shall notify his/her immediate supervisor of problems that cannot be resolved within contract limitations and whenever contract or program objectives are not met. The notification shall include a statement of action being taken by the contracting officer.

342.7003 Withholding of contract payments.

342.7003-1 Policy.

(a) All solicitations and resultant contracts shall contain the withholding of contract payments clause at 352.232-9, and an excusable delays clause, or a clause which incorporates the definition of excusable delays. The excusable delays clause at 352.249-14 shall be used when the solicitation and resultant contract (other than purchase orders) does not contain a default or other excusable delays clause.

(b) The transmittal letter used to convey the contract to each contractor shall contain a notice which highlights the contractor's agreement with the withholding of contract payments clause.

(c) No contract payment shall be made when any report required to be submitted by the contractor is overdue, or the contractor fails to perform or deliver work or services as required by the contract.

(d) The contracting officer shall issue a ten-day cure notice or initiate appropriate termination action for any failure in the contractor's performance as stated in paragraph (c) of this section.

342.7003-2 Procedures.

(a) The contracting officer is responsible for initiating immediate action to protect the Government's rights whenever the contractor fails to comply with either the delivery or reporting provisions of the contract. Compliance with the reporting provisions includes

those reports to be submitted directly to the payment office. If such a report is not submitted on time, the contracting officer is to be notified promptly by the payment officer.

(b) When the contract contains a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a default in performance. In either circumstance, the contracting officer is to immediately issue a formal ten-day cure notice pursuant to the default clause. The cure notice is to follow the format prescribed in FAR 49.607 and is to include a statement to the effect that contract payments will be withheld if the default is not cured or is not determined to be excusable.

(1) If the default is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

(2) If the default is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for default or other action would be in the best interest of the Government.

(c) When the contract does not contain a termination for default clause, the contractor's failure to either submit any required report when due or perform or deliver services or work when required by the contract is to be considered a failure to perform. In either circumstance, the contracting officer is to immediately issue a written notice to the contractor specifying the failure and providing a period of ten days, or longer period as determined necessary by the contracting officer, in which the contractor is to cure the failure or establish an excusable delay. The contracting officer is to include a statement in the written notice to the effect that contract payments will be withheld if the failure is not cured or is not determined to be excusable.

(1) If the failure is cured or is determined to be excusable, the contracting officer is not to initiate the withholding action.

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(2) If the failure is not determined to be excusable or a response is not received within the allotted time, the contracting officer is to initiate withholding action on all contract payments and is to determine whether termination for convenience or other action would be in the best interest of the Government.

(d) The contracting officer should consult FAR subpart 49.4 for further guidance before taking any of the actions described in this section.

342.7003-3 Withholding payments.

(a) When making the determination that contract payments should be withheld in accordance with the Withholding of Contract Payments clause, the contracting officer is to immediately notify the servicing finance office in writing of the determination to suspend payments. The notice of suspension is to contain all elements of information required by the payment office to properly identify the contract and the applicable accounts involved.

(b) The contracting officer is to immediately notify the contractor in writing that payments have been suspended until the default or failure is cured.

(c) When the contractor cures the default or failure, the contracting officer is to immediately notify, in writing, all recipients of the notice of suspension that the suspension is to be lifted and contract payments are to be resumed.

(d) When exercising actions regarding the withholding of payment procedures, the contracting officer must be careful not to waive any of the Government's rights when corresponding with the contractor or when taking any other actions.

Subpart 342.71—Administrative Actions for Cost Overruns

342.7100 Scope of subpart.

This subpart sets forth the procedures to be followed when a cost overrun is anticipated; *i.e.*, the allowable actual cost of performing a cost-reimbursement type contract is expected to exceed the total estimated cost specified in the contract.

342.7101 Contract administration.

342.7101-1 General.

Upon receipt of information that a contractor's accumulated cost and projected expenditures will exceed the limit of funds obligated by the contract, the contracting officer shall coordinate immediately with the appropriate program office to determine whether the contract should be modified or terminated. If the contracting officer receives information from a source other than the contractor that a cost overrun is anticipated, the contracting officer shall verify the information with the contractor, and remind the contractor of the notification requirements of the Limitation of Cost clause.

342.7101-2 Procedures.

(a) Upon notification that a cost overrun is anticipated, the contracting officer shall inform the contractor to submit a request for additional funds which is to include:

(1) Name and address of contractor.

(2) Contract number and expiration date.

(3) Contract item(s) and amount(s) creating overrun.

(4) The elements of cost which changed from the original estimate (*i.e.*, labor, material, travel, overhead, etc.) to be furnished in the following format:

(i) Original estimate,

(ii) Costs incurred to date,

(iii) Estimated cost to completion,

(iv) Revised estimate, and

(v) Amount of adjustment.

(5) The factors responsible for the increase, *i.e.*, error in estimate, changed conditions, etc.

(6) The latest date by which funds must be available for commitment to avoid contract slippage, work stoppage, or other program impairment.

(b) When the contractor submits a notice of an impending overrun, the contracting officer shall:

(1) Immediately advise the appropriate program office and furnish a copy of the notice and any other data received;